

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BACOU-DALLOZ USA SAFETY, INC., and
HOWARD LEIGHT INDUSTRIES, LLC

Plaintiffs,

v.

CABOT SAFETY INTERMEDIATE
CORPORATION and AEARO COMPANY

Defendants.

Case No. 04-40049-NMG

DECLARATION OF BRIAN MYERS

I, Brian Myers, declare as follows:

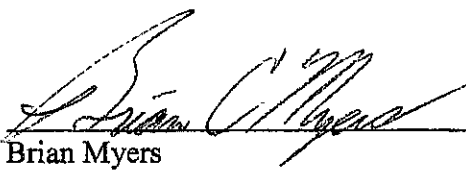
1. I am Marketing Director for the Passive Hearing Division of the defendant Aearo Company. I have personal knowledge of the matters stated herein and if called as a witness I could testify competently to the following facts.
2. The defendants, Cabot Safety Intermediate Corporation and Aearo Company (the defendants are collectively referred to herein as "Cabot"), are both corporations organized and existing under the laws of the State of Delaware. Defendant Aearo Company has its headquarters and principal place of business at 5457 West 79th Street, Indianapolis, Indiana 46268. Defendant Cabot Safety Intermediate Corporation is headquartered in Delaware.
3. I am primarily responsible for advertising, marketing and sales decisions relating to all of Cabot's earplug products.

4. I work in Indianapolis, Indiana and live in the Indianapolis area. All of the employees who are involved in the decision-making for the marketing, advertising and sales of Cabot's earplug products work at the Indianapolis facility and live in and around Indianapolis.¹ All of the records relating to the marketing, advertising and sales of Cabot's earplug products are located in Indianapolis, Indiana.
5. Either myself or other employees of Cabot in Indianapolis will be testifying on the marketing, advertising and sales of Cabot's earplug products if called to do so.
6. Cabot's manufacturing facility in Southbridge, Massachusetts is primarily for the manufacture of safety eyewear. Only one brand of Cabot's yellow colored earplugs, known as the UltraFit, is manufactured in the Southbridge facility. After manufacture, the UltraFit is shipped to Indianapolis for packaging.
7. All other brands of Cabot's yellow colored earplugs are manufactured in Indianapolis, such as the E-A-R Classic, the E-A-R Classic SuperFit, the Taperfit, the E-Z Fit, the E-A-Rsoft Yellow Neons, and the E-A-RSoft FX. Moreover, all of Cabot's earplug products, including the UltraFit, are distributed from Indianapolis to customers worldwide.
8. None of the marketing, advertising and/or sales personnel responsible for Cabot's yellow colored earplugs are located in Southbridge. Moreover, no

¹ James Bernhardt, Vice President of Marketing for Aeero, works in Indianapolis three days per week but has a primary residence in Charlotte, North Carolina.

documents relating to the marketing, advertising and/or sales of Cabot's yellow colored earplugs are located in Southbridge. To my knowledge, there are no witnesses in Massachusetts that would have any factual knowledge about the marketing, advertising or sale of Cabot's earplug products.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 29th day of April, 2004, at Indianapolis, Indiana.

By: 
Brian Myers

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECLARATION OF BRIAN MYERS was sent by first class mail, postage prepaid, on this 27th day of April, 2004, to the following:

Charles Hieken, Esq.
Gregory A. Madera, Esq.
225 Franklin Street
Boston, MA 02110-2804



Andrew C. Ryan